

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

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W. D. JACKETT, JR.
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA.

UNITED STATES OF AMERICA,)
)
Petitioner,)
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)
Barry S. Ford,)
)
)
Respondent.)

Civil Case Number: 1:06-mc-3297-MHT

MOTION TO RECONSIDER

Respondent Barry S. Ford respectfully submits this Motion to Reconsider the Motion to Dismiss for the following reasons.

I. Amendment of Records

Respondent respectfully objects to the assertion that no evidence was produced that the records maintained by the IRS on Respondent are inaccurate. Respondent submitted the Individual Master File MCC Transcript-Complete (IMF) pertaining to Respondent and the applicable publications of the federal government which explain entries on Respondent's IMF. The evidence submitted to this Court in the Motion to Dismiss and Exhibits #1 and #2 proves that the IRS is maintaining fraudulent records on Respondent. Following are specific examples from those Exhibits of evidence that the IRS records are inaccurate and fraudulent:

A. There is a VAL-1 code posted to Respondent's IMF (see Exhibit #2 of Motion to Dismiss, Page 0001 of the IMF Transcript, copy attached). The IMF computer program contains an internal system of validity checks. On the Respondent's IMF, the most prominent and most significant of these validity checks is a permanent posting to the

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computer field described as “VAL-1”. The Law Enforcement Manual III at LEM 3(27)(68)0-7 explains that the SSN Validity Digit of “1” means that, “The SSN is not valid for the taxpayer using it” (Exhibit # 2 of Motion to Dismiss, copy attached). The Handbook for Special Agents at page 9781-240.16 states that the VAL-1 is an “Invalid SSN freeze” (Exhibit # 2 of Motion to Dismiss, copy attached).

IR Manual 3500 at page 0-57 further explains that the VAL-1 code means that: the “Invalid SSN Freeze has been released by transaction code 290 or 300 or Scrambled SSN Indicator of ‘2’...”. However, there are no transaction codes of 290 or 300 that have been timely posted for each year of Respondent’s IMF record. There is also no “Indicator of 2”, which causes the inference that the computer software has been manipulated in order to post the VAL-1 code. Unless both of the above conditions are satisfied, the permanent invalid SSN freeze remains in effect and no transactions can be posted to the IMF. Consequently, all subsequent entries posted are erroneous because the SSN is invalid for the tax years posted to Respondent’s IMF.

Pursuant to 26 U.S.C. Section 6109(a)(1) and (d), 26 CFR 1.6109-1 and Law Enforcement Manual III at page 0-7, an accurate SSN is the foundation upon which all of an individual’s system of records (IMF) is created (Exhibit # 2 of Motion to Dismiss, copy attached). Since Respondent’s SSN is “invalid”, then the files maintained by the IRS on Respondent are likewise inaccurate, invalid and unusable. Because of the permanent nature of the freeze code, according to the IRS rules and **U.S. vs Buford**, nothing else should be able to be added to the individual’s IMF. In the aforementioned case at page 1410, footnote 4 the Court of Appeals for the Fifth Circuit described a freeze code as follows:

“Freeze Code.” A code placed in the IMF indicating that a tax return, if filed, should be rejected. Thus, if a freeze code is in the IMF, an individual can file a return and the computer will, even so, show that non was filed.”

Instead of following the two internally mandated requirements, it appears that the master computer software has been willfully manipulated by the IRS to accommodate the posting of numerous entries on the Requesters IMF erroneously. Following is evidence as to how this fraudulent manipulation occurred.

B. There is a Justification – 1 entry posted to Respondent’s IMF (page 0001 of the IMF, copy attached). This internal code as posted to the IMF account is defined within the Internal Revenue Manual at 3.13.5.8.12.1 (01-01-2001) and reads at 3(B) as follows (Exhibit # 2 of Motion to Dismiss, copy attached):

“When the ‘Justification indicator of ‘1’ is present, the account is treated as valid.” (*Emphasis added*)

The word “treat” is commonly used to describe a condition that is contrary to fact. To “treat” something as if it were valid clearly establishes the contrary. The foregoing definition of the Justification indicator of ‘1’ evidences that all transactions posted to Respondent’s IMF record are in error as these transactions were posted to an invalid (VAL-1) account that is merely treated as if it were valid when, in fact, it is not.

C. There is a Transaction Code of 971 posted to Respondent’s file (see Page 0001 of the IMF, copy attached). The definition of TC 971 set forth in both the ADP IDRS Document 6209 manual and the Law Enforcement Manual (Exhibit # 2 of Motion to

Dismiss, copies attached) explains that this particular code is used to post data to either an incorrect TIN or to an incorrect Taxable year. This application of the TC 971 code provides further confirmation that the Invalid Social Security Number Freeze (previously identified as the “VAL-1” Freeze) is, in fact, caused by an incorrect TIN applied to the Respondent’s account. The Respondent’s IMF shows the TC 971 code posted to the Entity Module of Respondent’s IMF Complete and therefore applies to each and every taxable year from the very beginning. Accordingly, the TC 971 code cannot possibly have been intended to enable the posting of data to a specific “incorrect” taxable year since it applies to all taxable years. From its definition, this code is only used to post data to an IMF that contains an incorrect TIN.

These examples which are dealt with in more detail in Exhibit #2 of Respondent’s Motion to Dismiss meet the “showing of cause for suspecting fraud” in the Powell, 379 U.S. 48 case and the summons should be defeated until the records are corrected.

II.. Lack of Authority of a Small Business/Self Employed Business Officer to Issue Summons

The IRS asserts that Respondent is a small business or self-employed business. There is a posting of BODC-SB (Business Operating Division Code – Small Business) to Respondent’s file (Exhibit # 2, Page 0001 of IMF, copy attached). The entry of BODC-SB is defined as Business Operating Division Code – Small Business (Internal Revenue Manual [8.1.1] 1-10(07-10-2000) and IRS 6209 manual [2003, P. 7-3, section 7-10]). This provides glaring evidence that the IRS sees Respondent as a business. Respondent has denied being a small business or self-employed business (page 5 of Motion to Dismiss). Respondent has

also taken out a sworn affidavit attesting to the fact that he is not a business (attached). It is the IRS that has asserted that Respondent is a small business or self-employed business by evidence in their own files, but they have not provided any proof to that effect. Respondent cannot prove a negative.

III. The IRS's Lack of Authority

Respondent did not dispute the Service's authority to issue summons; however, because of the clear errors in the record, he does refute the Service's presumption to move forward based on fraudulent entries in Respondent's files.

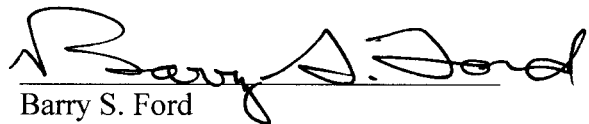
Summation

1. Respondent has provided substantial evidence of "some showing of cause for suspecting fraud" as cited in *U.S. v. Powell*, 379 U.S. 48, 57-58 (1964). This evidence is taken directly from the IRS files and government documents.
2. The administrative steps required by the IRS have not been followed as cited in Powell. The Internal Revenue Manual at 3.13.5.2.1.1 (01-01-2003) states: "It is **our responsibility** to correct and research a taxpayer's account when problems exist on the IMF" (*Emphasis Added*). Respondent mailed a "Request to Change Errors in the Permanent Records" to the IRS (Exhibit # 1 of Motion to Dismiss, also attached is a copy of the return receipts confirming delivery). In that Request, Respondent gave the IRS 30 days to respond and that their non-response would be deemed to be agreement that the facts (as stated in Exhibits # 1 and # 2) are correct and accurate. Respondent sent two such Requests and the IRS did not respond to either one in a timely fashion thereby agreeing that there are significant errors in his files. Respondent re-affirms his request that this Court fulfill the Service's self-imposed responsibility to correct his records.

3. The fraudulent entries in Respondent's file reflects on the good faith of this particular investigation.
4. Enforcement of the summons would constitute an abuse of this Court's process since the IRS is in agreement that their records in Respondent's file are inaccurate and probably fraudulent.

I, Barry S. Ford, declare under penalties of perjury under the laws of these united States of America that the foregoing is true and correct to the best of my knowledge, is made in good faith and is admitted when not rebutted.

Respectfully submitted on this 11th day of September, 2006.

A handwritten signature in black ink, appearing to read "Barry S. Ford", written over a horizontal line.

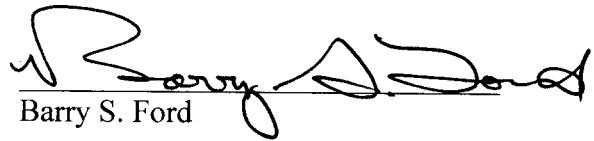
Barry S. Ford
1704 Trawick Road
Dothan, AL 36305

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Response and Motion to Reconsider was hand delivered to:

R. Randolph Neeley
Assistant United States Attorney
One Court Square, Suite 201
Montgomery, AL 36104

Done this 11th day of September, 2006.


Barry S. Ford